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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.4471 OF 2004
IN
CRIMINAL APPEAL NO.1239 OF 2004

Bawne Ingnatius John Rego ...Applicant

V/s

Superintendent of Customs
and Anr. ...Respondents.

Mr. Satish L. Manshinde with Sayaji D. Nagre
with Rajeshree Gandhvi, advocates for the applicant

Mr. B.A. Desai, Addl. Solicitor General of India with
Mr. H.V. Mehta and Mr. Advait M. Sethna, advocate for
the respondent No.1.

Mr. R.Y. Mirza, APP for the respondent No.2 - State.

CORAM: V.M.KANADE,J.
DATE: 4th November, 2004.

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1. This is an application for bail filed by the applicant who is convicted by the Trial Court for having committed an offence punishable under sections 21, 23, 30 read with section 29 of the N.D.P.S. Act and also for an offence punishable under section 135-A of the Customs Act in N.D.P.S. Special Case No.677 of 1997.

2. Prosecution case in brief is that on 9/10/1997, the accused No.1 was apprehended at the Air India Baggage X-ray Machine Counter where the bag he was carrying was found to have illegal contraband containing heroin. The allegation against the applicant was that, initially, he was employed with Air India as Flight Purser and he had got involved in drug case in U.K. He was sentenced and had undergone the sentence. Thereafter, on 9/10/1997, the Customs Officers had visited his house and had confronted him with the suitcase from which heroin was recovered and he identified it to be the same suitcase which was handed over to him by accused No.3 on 23/9/1997 and,

thereafter, the accused No.2 and the applicant had delivered it to accused No.1.

3. The learned Counsel appearing on behalf of the applicant submitted that the applicant was arrested on 10/10/1997 and was in jail since then. He submitted that the applicant is 67 years of age and had already undergone 70% of the entire sentence. He submitted that the appeal is not likely to be heard in the near future. The learned Counsel relied upon the Order of this Court in Criminal Application No.1740 of 2004 in Criminal Appeal No.1411 of 2003 (Suresh Vitthal Rane Vs. The Intelligence Officer) wherein the applicant was released on bail as he has undergone five years of sentence. It is submitted that, in the present case, applicant has undergone more than 7 years of sentence. He also relied upon the judgment of the Apex Court in the case of Supreme Court Legal Aid Committee@
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Representing Undertrial Prisoners Vs. Union of India@
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& Ors. reported in (1994) 6 SCC 731 and also judgment@
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of the Supreme Court in the case of Bhagwan Rama@
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Shinde Gosai and others Vs. State of Gujarat,@
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reported in AIR 1999 S.C. 1859.@@
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4. In the present case, the applicant was sentenced in similar case in U.K. and has undergone the sentence and, thereafter, he has been convicted for the second time for having committed an offence under the N.D.P.S. Act. In view of this, judgments relied upon by the learned Counsel appearing on behalf of the applicant will not be applicable to the facts of the present case. Ordinarily if a person is convicted under the N.D.P.S. Act once and, thereafter, he is tried for having committed the similar offence under the N.D.P.S. Act then the only punishment which can be awarded by the Special Court is death penalty. In the present case, it appears that, earlier, sentence of conviction was imposed by the Court in U.K. and the proceedings in the said case are not before this Court. In my view, prima facie case for grant of bail is not made out. Accordingly the following order is passed:-

O R D E R

. Criminal Application for Bail is rejected. Hearing of the appeal is expedited. The statement made by Shri B.A. Desai, learned ASG appearing on behalf of

the Union of India that Union of India shall prepare a private paper-book within 8 weeks is accepted. However, it is clarified that the applicant shall be at liberty to apply for fixed date of hearing after the paper-book is filed in this Court. However, if the paper-book is not filed within a period of two months, applicant will be at liberty to apply for bail again in view of the fact that the applicant is in jail since 10/10/1997 i.e. for a period of more than 7 years. Applicant is sentenced to undergo R.I. for 10 years. He has already completed more than 7 years of his sentence. Applicant is 67 years old and in view of these facts, liberty is given to the applicant to file fresh application for bail.

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V.M. KANADE, J.